IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2069 of 2006
with
CIVIL APPLICATION NO. 7512 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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NATIONAL INSURANCE COMPANY LIMITED - Appellant(s)
Versus
ABHESING PRATAPSING WAGHELA & 2 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 06/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

1. This appeal is directed against judgement and award dated 27th February, 2006 passed by the Motor Accident Claims Tribunal (Aux.), Vadodara, in Motor Accident Claims Petition No. 334 of 1995 by which the Tribunal awarded a sum of Rs. 46,600/- in favour of the original claimant and holding all the opponents including opponent No. 3 Insurance Company (the appellant herein) with the liability to pay the said sum of compensation together with interest at the rate of 9% per annum from the date of application and proportionate costs for the injuries caused to original claimant respondent No. 1 herein who sustained injuries in a motor vehicle accident caused by the rash and negligent driving of the truck owned by opponent No. 2 which is insured by the present appellant.

2. The defence of the Insurance Company was that on the date of the accident i.e. 27.1.1995 the vehicle was not insured with the appellant Company because the cheque dated 20.1.1995 which the owner had given to the Insurance Company was dishonoured and the owner of the vehicle paid premium in cash on 30.1.1995 and therefore the appellant Insurance Company issued the policy effective for the period from 30.1.1995 to 29.01.1996. The Tribunal relied on the decision of the Apex Court in the case reported in 1998 ACJ 123 (SC) and also on the decision of this

Court reported in 2005(1) GLH 330 (Guj)for the purpose of holding that since the Insurance Company had not avoided its liability by following the provisions of Section 147(4) of the Motor Vehicles Act, the Insurance Company could not be exonerated from its liability to satisfy the award.

3. Ms. Megha Jani, learned advocate for the appellant Insurance Company has submitted that the liability of the Insurance Company would arise only upon issuance of the policy or issuance of a cover note but in the instant case the Insurance Company had issued on 23.1.1995 Motor Input Advice-Cum-Receipt which also clearly stipulated “cheques are subject to realisation”. It is further submitted that Section 145(b) defines “certificate of insurance” as a certificate issued by the Insurance Company in pursuance of Section 147(3) and includes a cover note. It is submitted that since the Insurance Company had not issued any cover note, the Tribunal was not justified in relying on the provisions of sub-Section (4) of Section 147.

4. In Oriental Insurance Company Ltd. Vs. Inderjit Kaur reported in 1998(1) SCC 371, the Apex Court held that if the Insurance Company issues a policy of insurance to cover the vehicle without receiving the premium therefor, the Insurance Company is liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof

notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured. The said decision was followed in the case of NEW INDIA ASSURANCE CO. LTD. VS. RULA AND OTHERS reported in (2000) 3 SCC 195 where the Apex Court held that where on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party. The Apex Court also explained that the manifest object of the provision of Section 146(1) of the Act prohibiting the use of motor vehicle without an insurance policy is to ensure that the third party who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Any contract of insurance under Chapter XI of the Motor vehicles Act, 1988, contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. The third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is

concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is only on the basis of this policy that the claim can be maintained by the third party against the insurer.

5. The learned counsel for the Insurance Company submitted that in the facts and circumstances of the case no policy of insurance or cover note was issued on 23.1.1995 but a motor input-cum-advice receipt was issued and no number was mentioned against column “cover note number”.

6. In the first place it is not possible to accept the contention that the document exh. 38 purporting to be “Motor Input-cum-Advice-Receipt” cannot be construed as a cover note. If this document was supposed to precede the cover note, the question of mentioning cover note number on this document would not arise. Apart from the fact that against column “cover note number” “No. 279106” is mentioned. The document also indicates “current policy number” and in document Exh. 38 current policy number is mentioned meaning thereby the vehicle in question was already insured for the period 23.1.1995 onwards as the owner of the vehicle had given cheque for a sum of Rs. 5,847/- for renewal of insurance policy. It is the case of the Insurance Company itself that subsequently on 30.1.1995 the owner of the vehicle paid the amount in cash as the cheque was not honoured. This would mean that the owner of the

vehicle had given the cash in lieu of the cheque which was earlier given to the Insurance Company on 23.1.1995. In case of renewal of an insurance policy, there cannot be any hesitation in holding that the cash paid on 30.1.1995 was paid in lieu of the cheque for the amount of renewal premium which was already tendered on 23.1.1995 and therefore would relate back to 23.1.1995.

7. The learned counsel for the Insurance Company however submitted that after receiving the cash premium on 30.1.1995 the Insurance Company had issued policy effective from 30.1.1995 and therefore on the date of the accident (i.e. On 27.1.1995) there was no policy in force.

8. We are, however, of the view that by subsequently issuing the formal document of policy of insurance and giving it effect from 30.1.1995, the Insurance Company cannot avoid its liability which it had undertaken on 23.1.1995 by accepting the premium by cheque. The reliance placed by the learned counsel for the Insurance Company on the provisions of Section 64VB of the Act is also of no avail to the Insurance Company. The Section provides that “no risk shall be assumed by the insurance Company unless premium is received in advance”. This provides that the risk may be assumed earlier than the date on which the premium has been paid in cash to the insured. Hence it was open to the insurance company to assume the risk on receiving the cheque on

23.1.1995 and by issuing document Exh. 38 which has to be treated as a cover note though it purported to be a Motor Input Advice-cum-Receipt. Any dishonour of the cheque thereafter would confer on the Insurance Company the right to avoid liability already incurred, only by following the procedure under Section 147(4) of the Act. We are, therefore, of the view that the Tribunal did not commit any error in holding the Insurance Company jointly and severally liable with the owner and driver of the vehicle in question.

9. At this stage, the learned counsel for the appellant, however, submitted that the appellant has already been denied the remedy to recover the amount from opponent No. 2 insured. We are not inclined to go into that question in the present proceedings and if the appellant is otherwise entitled to recover the amount from the insured, the observation made by the Tribunal shall not be treated as coming in the way of the appellant Insurance Company in pursuing its remedies against opponent No. 2, the owner of the vehicle at the relevant time.

10. Subject to the above observations, the appeal is dismissed.

11. Since the appeal is dismissed, the Civil Application is also rejected.

(M.S. SHAH, J)

(K.M. MEHTA, J)

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